

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4850 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
P.C. ACHARYA

Versus

STATE OF GUJARAT

-----  
Appearance:

MR MANOJ N POPAT for Petitioner

MR BY MANKAD, AGP FOR M/S MG DOSHIT & CO for Respondent

No. 1, 2, 3

-----  
CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 01/12/98

ORAL JUDGEMENT

This Special Civil Application is preferred by the petitioner, a government servant, and has prayed that his date of birth should be corrected from 25.10.1928 to 29.10.1929, in his service record It is contended by the petitioner that he has joined the services of respondent no.1 State with the Regional Transport Office as a Clerk

from 15.2.1951 and at that time, his date of birth was mentioned as 25.10.1928. Say of the petitioner is that when he was engaged in the repairs of dilapidated family house, he found out a horoscope and realised that his correct date of birth is 29.10.1929 and not 25.10.1928 as recorded in the service book. According to the petitioner, he also then tried to verify from Birth & Death Registration Office of village Vankaner where he was born and got extract from the register which was maintained by Chief Constable of Vankaner region in those days. The petitioner squarely relies on these document which is annexed at Annex.B.

According to Mr. Manoj Popat, learned counsel appearing for the petitioner, the verdict in the case of B.K.Suthar ( reported in 1983 GLH P.428 ) is applicable to the facts of the present case. Mr. Popat, learned counsel for the petitioner has further submitted that though today the petitioner is not in government service, he can be put to financial advantage if date of birth of the petitioner is corrected in view of the ratio laid down in the case of B.K.Suthar (supra).

On query raised by this Court, learned AGP Mr. Mankad has submitted that the subsequent decisions of this High Court as well as the Supreme Court are contrary to the ratio laid down in B.K.Suthar's case (supra).

In the case of The Secretary & Commissioner, Home Department & Others v/s R.Kirubakaran, reported in JT 1993 (5) SC 404, it has been held by the Apex Court that when dispute is raised on the eve of superannuation, in absence of prima facie evidence of unimpeachable character, the Court or Tribunal must go slow in granting interim relief for continuation in service. Onus is on the applicant to prove the wrong recording of his date of birth. Report of the Revenue Officer cannot be the sole basis for correcting the date of birth. Here in the case on hand zerox copy of extract of the register which was maintained by the Chief Constable is the sole piece of evidence and the petition is moved practically on the eve of superannuation. As referred above, the petitioner has joined services of the government in Regional Transport Office in the year 1951 and the petition is preferred in the year 1986. It is important to note that the petitioner applied to the Department for the first time in the year 1985. Explanation of the petitioner for not moving the department till 1985 is not found plausible and convincing.

Another decision on which Mr. Mankad relies is the decision rendered in the case of Burn Standard Co. Ltd. and others v/s Dinabandhu Majmudar and another, reported in AIR 1995 SC 1499, wherein the Apex Court has held that Ordinarily, High Court should not, in exercise

of its discretionary writ jurisdiction, entertain a writ application/petition filed by an employee of the Government or its instrumentality, towards the fag end of his service, seeking correction of his date of birth entered in his "Service & Leave Record" or Service Register. In the case before the Apex Court, respondent employee had applied to the department just before the normal period of his retirement.

A decision is rendered in the case of Visakhapatnam Dock Labour Board v/s E. Atchanna and others, reported in (1996)2 SCC 484. The facts of the case before the Apex Court are quite different than the case on hand before this Court. But ratio in the aforesaid case is based on the ratio propounded by the Apex Court in the case of Union of India v/s Hanuman Singh, reported in (1993)2 SCC 162. In the case of Hanuman Singh (supra), the Apex Court has held as under:-

" It is open to a civil servant to claim correction of his date of birth if he is in possession of irrefutable proof relating to his date of birth as different from the earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the government servant must do so without any unreasonable delay. In the absence of any provision in the rules for correction of date of birth, the general principle of refusing relief on grounds of laches or stale claims, is generally applied by the courts and tribunals. It is nonetheless competent for the Government to fix a time-limit, in the service rules, after which no application for correction of date of birth of a government servant can be entertained. A government servant who makes an application for correction of date of birth beyond the time, so fixed, therefore, cannot claim, as a matter of right, the correction of his date of birth even if he has good evidence to establish that the recorded date of birth is clearly erroneous. The law of limitation may operate harshly but it has to be applied with all its rigour and the courts or tribunals cannot come to the aid of those who sleep over their rights and allow the period of limitation to expire. Unless altered, his date of birth as recorded would determine his date of superannuation even if it amounts to abridging his right to continue in service on the basis of his actual age."

The ratio propounded by the Apex Court in the

aforesaid case is applicable to the case on hand.

Learned AGP Mr. Mankad has also drawn attention of this Court on three citations which are reported in AIR 1997 Supreme Court at pages 1986, 2055 and 2452 respectively. I do not see any need to refer to the names of the parties in all the three decisions. Ratio propounded in all the three decisions is similar. It is to be noted here that the facts enumerated in the decision in the case of Commissioner of Bombay & Others v/s Bhagwan V.Lahne, reported at page 1986 of AIR 1997 Supreme Court, are very similar to the facts of the case on hand. The petitioner at the time of joining service, had supplied copy of the School Leaving Certificate to the State machinery i.e. Recruiting Department, and in the case before the Apex Court School Leaving Certificate was given. At the time of seeking correction of date of birth, one entry from birth register was produced before the High Court. On scrutiny, the Apex Court has held as under :-

" ..... It appears that he got the entry in the birth register corrected, then obtained a copy of it and produced the same before the authority. Once it was found to be doubtful, the authorities were right in not correcting his birth date in the service book. Admittedly, the School Leaving Certificate was produced by the respondent and the entry in the service book was made on the basis of the birth date mentioned therein. as he failed to show that the said entry was made due to want of care on the part of some other person or that it was an obvious clerical error, the Tribunal ought not to have directed the appellant to correct the same."

Submission of learned AGP based on the aforesaid decisions is that in view of the facts of the present case and facts enumerated in the aforesaid decision, it should be held that the entry Annex.B is doubtful and should be viewed with suspicion and hence petition should be dismissed.

This is not a case of complicated facts. Facts enumerated in the petition speak for themselves, and ratio propounded in aforesaid decisions would be applicable to the facts of the present case and, therefore, I am not inclined to accept the submissions canvassed by the learned counsel appearing for the petitioner. Hence, in my opinion, petition requires to be dismissed and accordingly the same is hereby dismissed. Rule is discharged with no orders as to costs.

ooooo  
\*rawal